

1 Tanya E. Moore, SBN 206683
2 MOORE LAW FIRM, P.C.
3 334 North Second Street
4 San Jose, California 95112
5 Telephone (408) 298-2000
6 Facsimile (408) 298-6046
7 E-mail: service@moorelawfirm.com
8 tanya@moorelawfirm.com

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10 Attorney for Plaintiff
11 Gerardo Hernandez

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11 GERARDO HERNANDEZ,) No.
12 Plaintiff, } COMPLAINT ASSERTING DENIAL OF
13 vs. } RIGHT OF ACCESS UNDER THE
14 KN PETROLEUM, LLC; KN STATIONS } AMERICANS WITH DISABILITIES ACT
15 LLC dba SAN MATEO ALLIANCE; } FOR INJUNCTIVE RELIEF,
16 Defendants. } DECLARATORY RELIEF, DAMAGES,
17 } ATTORNEYS' FEES AND COSTS (ADA)
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20 **I. SUMMARY**

21 1. This is a civil rights action by plaintiff GERARDO HERNANDEZ ("Plaintiff")
22 for discrimination at the building, structure, facility, complex, property, land, development,
23 and/or surrounding business complex known as:

24 San Mateo Alliance
25 1471 East Third Avenue
26 San Mateo, CA 94401
27 (hereafter "the Facility")

28 2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and
29 costs, against KN PETROLEUM, LLC and KN STATIONS LLC dba SAN MATEO

1 ALLIANCE (hereinafter collectively referred to as “Defendants”), pursuant to Title III of the
2 Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related
3 California statutes.

4 **II. JURISDICTION**

5 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
6 claims.

7 4. Supplemental jurisdiction for claims brought under parallel California law –
8 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1337.

9 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

10 **III. VENUE**

11 6. All actions complained of herein take place within the jurisdiction of the United
12 States District Court, Northern District of California, and venue is invoked pursuant to 28
13 U.S.C. § 1331(b), (c).

14 **IV. PARTIES**

15 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
16 persons), firm, and/or corporation.

17 8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair
18 for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable
19 California and United States laws, and a member of the public whose rights are protected by
20 these laws.

21 **V. FACTS**

22 9. The Facility is a gas station that is open to the public, intended for non-
23 residential use, and its operation affects commerce. The Facility is therefore a public
24 accommodation as defined by applicable state and federal laws.

25 10. Plaintiff lives less than 15 miles from the Facility and visited the Facility on or
26 about October 4, 2023 to buy gas and drinks. During his visit to the Facility, Plaintiff
27 personally encountered barriers (both physical and intangible) that interfered with, if not
28 outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges and

1 accommodations offered at the Facility. These barriers include, but are not necessarily limited
2 to, the following:

- 3 a) Plaintiff wanted to park in a designated accessible parking stall so that
4 he could go into the store to pay for gas and purchase refreshments. The
5 designated accessible parking stall in the Facility's parking lot was
6 improperly configured and lacked an access aisle, which Plaintiff
7 requires in order to unload his wheelchair from his car.
- 8 b) Plaintiff could not see any accessible route from the designated
9 accessible parking to the Facility entrance. Upon further investigation,
10 Plaintiff has confirmed that there is no accessible route to the store
11 entrance as the route contains a step that creates a large vertical height
12 change, with no ramp. Since Plaintiff could not unload at the designated
13 accessible parking and go into the store, he had to park at the fuel pump
14 instead and wait in the car while his son went into the store to pay and
15 buy him a drink.

16 11. There may exist other barriers at the Facility which relate to Plaintiff's
17 disabilities, and he will seek to amend this Complaint once such additional barriers are
18 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to
19 his disabilities removed to afford him full and equal access.

20 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
21 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
22 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
23 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
24 once the barriers are removed.

25 13. Defendants knew, or should have known, that these elements and areas of the
26 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
27 the physically disabled. Moreover, Defendants have the financial resources to remove these
28 barriers from the Facility (without much difficulty or expense), and make the Facility

1 accessible to the physically disabled. To date, however, Defendants refuse to either remove
2 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

3 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
4 and authority to modify the Facility to remove impediments to wheelchair access and to
5 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
6 Accessible Design. Defendants have not removed such impediments and have not modified the
7 Facility to conform to accessibility standards. Defendants have intentionally maintained the Facility
8 in its current condition and have intentionally refrained from altering the Facility so
9 that it complies with the accessibility standards.

10 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
11 so obvious as to establish Defendants' discriminatory intent. On information and belief,
12 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
13 to relevant building standards; disregard for the building plans and permits issued for the
14 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
15 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
16 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
17 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
18 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

22 16. Plaintiff re-pleads and incorporates by reference the allegations contained in
23 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

24 17. Title III of the ADA holds as a “general rule” that no individual shall be
25 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
26 goods, services, facilities, privileges, and accommodations offered by any person who owns,
27 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

28 //

18. Defendants discriminated against Plaintiff by denying Plaintiff "full and equal
enjoyment" and use of the goods, services, facilities, privileges and accommodations of the
Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

5 19. The ADA specifically prohibits failing to remove architectural barriers, which
6 are structural in nature, in existing facilities where such removal is readily achievable. 42
7 U.S.C. § 12182(b)(2)(A)(iv).

8 20. When an entity can demonstrate that removal of a barrier is not readily
9 achievable, a failure to make goods, services, facilities, or accommodations available through
10 alternative methods is also specifically prohibited if these methods are readily achievable. Id.
11 § 12182(b)(2)(A)(v).

12 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
13 barriers at the Facility without much difficulty or expense, that the cost of removing the
14 architectural barriers does not exceed the benefits under the particular circumstances, and that
15 Defendants violated the ADA by failing to remove those barriers, when it was readily
16 achievable to do so.

17 22. In the alternative, if it was not “readily achievable” for Defendants to remove
18 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
19 services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

21 23. Plaintiff alleges on information and belief that the Facility was designed and
22 constructed (or both) after January 26, 1993 – independently triggering access requirements
23 under Title III of the ADA.

24 24. The ADA also prohibits designing and constructing facilities for first occupancy
25 after January 26, 1993, that aren't readily accessible to, and usable by, individuals with
26 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

27 25. Here, Defendants violated the ADA by designing and constructing (or both) the
28 Facility in a manner that was not readily accessible to the physically disabled public –

1 including Plaintiff – when it was structurally practical to do so.¹

2 Failure to Make an Altered Facility Accessible

3 26. Plaintiff alleges on information and belief that the Facility was modified after
4 January 26, 1993, independently triggering access requirements under the ADA.

5 27. The ADA also requires that facilities altered in a manner that affects (or could
6 affect) its usability must be made readily accessible to individuals with disabilities to the
7 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
8 primary function also requires making the paths of travel, bathrooms, telephones, and drinking
9 fountains serving that area accessible to the maximum extent feasible. *Id.*

10 28. Here, Defendants altered the Facility in a manner that violated the ADA and
11 was not readily accessible to the physically disabled public – including Plaintiff – to the
12 maximum extent feasible.

13 Failure to Modify Existing Policies and Procedures

14 29. The ADA also requires reasonable modifications in policies, practices, or
15 procedures, when necessary to afford such goods, services, facilities, or accommodations to
16 individuals with disabilities, unless the entity can demonstrate that making such modifications
17 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

18 30. Here, Defendants violated the ADA by failing to make reasonable modifications
19 in policies, practices, or procedures at the Facility, when these modifications were necessary to
20 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or
21 accommodations.

22 Failure to Maintain Accessible Features

23 31. Defendants additionally violated the ADA by failing to maintain in operable
24 working condition those features of the Facility that are required to be readily accessible to and
25 usable by persons with disabilities.

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¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

1 32. Such failure by Defendants to maintain the Facility in an accessible condition
2 was not an isolated or temporary interruption in service or access due to maintenance or
3 repairs.

4 33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney
5 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

6 34. Plaintiff seeks a finding from this Court (i.e., declaratory relief) that Defendants
7 violated the ADA in order to pursue damages under California's Unruh Civil Rights Act.

VII. SECOND CLAIM

Unruh Act

10 35. Plaintiff re-pleads and incorporates by reference the allegations contained in
11 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

12 36. California Civil Code § 51 states, in part, that: All persons within the
13 jurisdiction of this state are entitled to the full and equal accommodations, advantages,
14 facilities, privileges, or services in all business establishments of every kind whatsoever.

15 37. California Civil Code § 51.5 also states, in part that: No business establishment
16 of any kind whatsoever shall discriminate against any person in this state because of the
17 disability of the person.

18 38. California Civil Code § 51(f) specifically incorporates (by reference) an
19 individual's rights under the ADA into the Unruh Act.

20 39. Defendants' aforementioned acts and omissions denied the physically disabled
21 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges
22 and services in a business establishment (because of their physical disability).

23 40. These acts and omissions (including the ones that violate the ADA) denied,
24 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

25 41. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory
26 minimum damages of \$4,000 for each offense.

27 42. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and
28 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code

§ 52(a).

VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

43. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

44. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

45. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

46. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

47. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA for the purposes of Unruh Act damages.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

1 6. For such other and further relief as the Court deems proper.
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Dated: June 17, 2024

MOORE LAW FIRM, P.C.

4 /s/ *Tanya E. Moore*
5 Tanya E. Moore
6 Attorney for Plaintiff
7 Gerardo Hernandez
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VERIFICATION
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7 I, GERARDO HERNANDEZ, am the plaintiff in the above-entitled action. I have read
8 the foregoing Complaint and know the contents thereof. The same is true of my own
9 knowledge, except as to those matters which are therein alleged on information and belief, and
10 as to those matters, I believe them to be true.
11

12 I verify under penalty of perjury that the foregoing is true and correct.
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14 Dated: June 18, 2024

/s/ Gerardo Hernandez

15 Gerardo Hernandez
16

17 I attest that the original signature of the person whose electronic signature is shown
18 above is maintained by me, and that his concurrence in the filing of this document and
19 attribution of his signature was obtained.
20

21 */s/ Tanya E. Moore*

22 Tanya E. Moore
23 Attorney for Plaintiff,
24 GERARDO HERNANDEZ
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